In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1234

UNITED STATES OF AMERICA,
Respondent-Appellee,

v.

MANUEL GLENN ABASCAL,
Petitioner-Appellant.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petitioner's Reply to the Memorandum in Opposition

The respondent recognizes that there is merit to the claims advanced in the petition for writ of certiorari. The respondent agrees that a warning would have been proper, and acknowledges the propriety of the use of the summary contempt power in this case "is uncertain" (Memorandum, at 5). However, the respondent urges this Court not to grant the petition for writ of certiorari, because as a result of the decision of the Ninth Circuit petitioner has served his sentence and the case has, thus, become moot (*Ibid,* at 6).

The decision of the Ninth Circuit did *not* render this case moot. Petitioner can show that under California law "further penalties or disabilities can be imposed on him as result of the judgment which has now been satisfied". *St. Pierre v. United States,* 319 U.S. 41, 43(1943).

The contempt conviction could render petitioner ineligible for admission to practice law as an attorney at law in California. Petitioner is a student in good standing at the New College of California School of Law in San Francisco. The petitioner has taken and successfully passed the First Year Law School Examination, commonly known as the "Baby Bar". (See Appendix "A" to this reply). Success on the "Baby Bar" is required by California law as a condition precedent to continued law study and admission to the State Bar of California by a student attending a school which has not been accredited by the examining committee. California Business and Professions Code, §6060(4) (g).

Petitioner's conviction for contempt would constitute evidence of his violation of the duty imposed upon attorneys under California Business and Professions Code, §6068(f) to refrain from any "offensive personality" towards the court. Exhibition of "offensive personality" is recognized as grounds for suspension from the practice of law. *In re Philbrook,* 105 C. 471, 38 P. 511 (1895); and *Hogan v. State Bar,* 36 C. 2d 807, 228 P. 2d 554 (1951). In a challenge to petitioner's application for admission to practice law based upon his contempt conviction, petitioner would have the burden of establishing his "good character". See *7 Cal Jur 3d,* "Attorneys At Law", §44, 301. Evidence which supports imposition of discipline may be equally used to prevent admission to the State Bar. *Ibid,* §43, 299. However, a favorable termination of criminal proceedings "is entitled to very serious consideration in any subsequent proceedings" involving an application for admission to the State Bar. See *Siegel v. Committee of Bar Examiners,* 10 C. 3d 156, 178, 514 P. 2d 967 (1973).

The fact that petitioner is preparing himself to practice law already appears in the record of this case. (See note 1, Memorandum, at 2).

The possibility that petitioner's contempt conviction might someday be counted against him in his quest for admission to practice law, even if a remote one, "is enough to give this case an adversary cast and make it justiciable". *Benton v. Maryland* 395 U.S. 784, 791 (1969). Application of the collateral consequences doctrine enabled this Court to find that the case was not moot in *Sibron v. New York,* 392 U.S. 40, 55, 56 (1968). There the judgment of conviction could have been used to impeach Sibron should he be called as a witness or used to augment punishment upon a conviction of a crime in the future. In *Ginsberg v. New York,* 390 U.S. 629, 633 n2 (1968), the case was not moot, because the "conviction might result in the revocation of the license required by municipal law as a prerequisite to engaging in the luncheonette business. . ." and, in *Street v. New York,* 394 U.S. 576, 579 n3(1969), the case was not moot, because Street might have been temporarily deprived of his employment, if his conviction had not been reviewed and reversed. Thus, this case is ripe for review now.

Still another reason why this case is not moot, and a reason recognized as an exception to the completed sentence doctrine by this Court in *St. Pierre v. United States, supra,* is: the petitioner could not have brought his case before this Court prior to the entry of the order of the Ninth Circuit reducing his sentence from 90 days to time served. Petitioner did everything in his power and in a timely manner to perfect his appeal and preserve the opportunity to have his claims reviewed. When the trial judge refused to admit petitioner to bail pending appeal of his contempt conviction, petitioner secured an order from the Ninth Circuit admitting him to bail and thereby staying service of the sentence. When the Ninth Circuit affirmed petitioner's conviction and reduced his sentence to time served, petitioner filed a timely petition for rehearing. When the Ninth Circuit denied the petition for rehearing, the petitioner obtained a stay of the mandate so that he could bring his case before this court for review (Appendix D, to petition). A federal

Circuit Court of Appeals, even less than a state court, may not fashion its remedy in such manner that the Government may argue petitioner's case has become moot merely because he could not bring it before this Court prior to a decision of the Ninth Circuit, which alone prevents review in this Court prior to the completion of Petitioner's sentence. See *Sibron v. New York, supra,* at 53.

The respondent argues that "petitioner has now been convicted of the drug offenses and sentenced to a term of nine years' imprisonment" and, thus, "adverse collateral consequences will obtain regardless of whether or not petitioner's citation for contempt stands . . ." (Memorandum, at 7). The respondent overlooks the fact that the validity of petitioner's conviction is much in doubt. See *Benton v. Maryland, supra,* at 793. The Ninth Circuit has twice recognized that the issues to be decided on petitioner's appeal to that court are substantial. On January 17, 1975, the Ninth Circuit vacated an order of the trial judge, setting exhorbitant bail as a condition for petitioner's release pending appeal, and remanded with directions. On February 26, 1975, the Ninth Circuit acted decisively and ordered petitioner's bail reduced to a reasonable amount. Thus, whether or not the petitioner will ever be committed under the sentence for the substantive offenses is very much unsettled and in doubt.

Finally, the respondent urges that if petitioner prevails in his appeal and adverse "collateral consequences are imposed" it would not oppose litigation of the issues in a petition for writ of *coram nobis* (Memorandum, at 7 n3). The respondent's offer should be rejected out of hand, for as this Court stated in *Sibron v. New York, supra,* at 56,57:

> "The question of the validity of a criminal conviction can arise in many contexts, . . . and the sooner the issue is fully litigated the better for all concerned. It is always preferable to litigate a matter when it is directly and principally in dispute, rather than in a proceeding where it is collateral to the central controversy."

The recent decision of this Court in *United States v. Wilson,* No. 73-1162, 43 LW 4584 (May 19, 1975), in which this Court upheld the imposition of summary contempt under Rule 42 (1), 18 United States Code, against a trial witness, makes it imperative that this Court grant certiorari. A decision by this Court that a warning is required will serve to continue to restrict the exercise of the summary contempt power to "the least possible power adequate to the end proposed". *Anderson v. Dunn,* 6 Wheat. 204, 231 (1821).

Respectfully submitted,

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June 9, 1975

APPENDIX

APPENDIX A

THE COMMITTEE OF BAR EXAMINERS

OF THE STATE BAR OF CALIFORNIA

Samuel I. Williams, Chairman
LOS ANGELES
Milton L. Schwartz, Vice-Chairman
SACRAMENTO
Rita Bosio Aguilar
SAN JOSE
Victor E. Chavez
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Leslie Barnes, Asst. Administrator
SAN FRANCISCO

August 23, 1974

TO: SUCCESSFUL APPLICANTS
1974 FIRST-YEAR LAW STUDENTS' EXAMINATION

We are pleased to inform you that you passed the June, 1974 First-Year Law Students' Examination with the grade indicated on the enclosed card.

You are now entitled to credit for no more than one year of law study accomplished before June 4, 1974 unless, upon petition and for good cause, the Committee decides that you are entitled to additional credit. Please see Rule VI, Section 61 of the Rules Regulating Admission to Practice Law in California (hereafter termed 'Rules') regarding such petitions.

Before you will be eligible to take the final bar examination, you must complete the legal education requirements, as set forth in Rule IX, Section 91 of the Rules. Unless you petition for and are granted additional credit by the Committee, you must, after June 4, 1974, complete three more years of law study as such law study is defined in Section 91, except that, if you are a student in an accredited law school and intend to qualify for the final bar examination by graduation therefrom, you may be able to do so after two and one-half years of additional study if your total studies include at least one year of full-time study or after two more years of full-time study if you have already completed one year of full-time study in such a school.

Your attention is also called to Rule VII, Section 71 of the Rules, regarding the application that you must file before you may take the final bar examination and the time within which you must file it.

For the Committee of Bar Examiners,

Kenneth D. McCleskey
Administrator

KDM:km
Enclosure

Keys to Grades: A - Excellent
B - Good
C - Fair
D - Barely Passed: Considerable improvement in rate of progress will have to be shown to pass bar examination.